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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 UNITED STATES OF AMERICA *ex rel.*
11 CHRISTINA ELLIS,

12 Plaintiff(s),

13 v.

14 JING SHU ZHENG, et al.,
15 Defendant(s).

Case No.: 2:16-cv-01447-APG-NJK

Order

16 Pending before the Court is an order to show cause why counterclaimant Zheng should not
17 be sanctioned (up to and including dismissal of her counterclaim) for failing to appear at the
18 settlement conference and for failing to otherwise comply with the order setting the settlement
19 conference. Docket No. 48. Ms. Zheng responded with an unelaborated assertion that she did not
20 receive the Court's order that was mailed to her. Docket No. 50; *but see* Docket No. 43 (notice of
21 electronic filing showing mailing of order to Ms. Zheng at her address listed on the docket). There
22 is a presumption of receipt of mailed orders, which can only be overcome through the presentation
23 of clear and convincing evidence to the contrary. *See, e.g., Fernandez v. Harrington*, 2015 WL
24 11216743, at *2-3 (C.D. Cal. Feb. 24, 2015) (providing extensive citations for this "venerable
25 principle of common law" dating back to the nineteenth century). It is well-settled that a bare
26 denial of receipt fails. *See, e.g., id.* at *3 (collecting cases).

27 The Court afforded Ms. Zheng a further opportunity to establish non-receipt of the subject
28 order at an evidentiary hearing. *See* Docket No. 51; *see also* Docket No. 53. At the evidentiary

1 hearing, Ms. Zheng provided testimony that was not fully credible and the Court is not persuaded
2 that she did not receive the order setting the settlement conference.

3 In this instance, the Court nonetheless declines to impose case-dispositive or monetary
4 sanctions, especially given that the parties participated in a settlement conference with the
5 undersigned following the show cause hearing. *See* Docket No. 54. The Court **ADMONISHES**
6 Ms. Zheng for her failure to comply with the order to appear for the settlement conference. The
7 Court further **CAUTIONS** Ms. Zheng that she is required to follow all orders moving forward
8 (including those already issued by Judge Gordon regarding, among other things, the requirement
9 to appear for the calendar call and for trial) and to comply with the rules that govern litigation in
10 this Court. **FAILURE TO COMPLY WITH ORDERS OR APPLICABLE RULES**
11 **MOVING FORWARD MAY RESULT IN THE IMPOSITION OF SANCTIONS, UP TO**
12 **AND INCLUDING DISMISSAL.**

13 IT IS SO ORDERED.

14 Dated: September 18, 2018

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17 Nancy J. Koppe
18 United States Magistrate Judge
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